

[Case Title] In re: Hill Forest Products, Inc., Debtor
[Case Number] 86-09663
[Bankruptcy Judge] Arthur J. Spector
[Adversary Number]XXXXXXXXXX
[Date Published] November 18, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

In re: HILL FOREST PRODUCTS, INC.,

Case No. 86-09663
Chapter 7

Debtor.

APPEARANCES:

GARY H. CUNNINGHAM
Attorney for Transamerica
Commercial Finance Corp.

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Attorney for Debtor

KAREN E. BORK
Attorney for Production Credit
Association of North Central
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DANIEL S. OPPERMAN
Attorney for Creditors' Committee

RANDALL L. FRANK
Chapter 7 Trustee

**MEMORANDUM OPINION RE: PRODUCTION CREDIT
ASSOCIATION'S NOTION FOR ON-SITE AUCTION SALE**

At the last hearing of Production Credit Association of
North

Central Michigan's (hereafter "PCA") motion for authority to hold an
auction sale of its collateral on the debtor's premises, the Court
required PCA, the moving party, to produce some authority for its
request. In the intervening time, both PCA and the opposing party,
Transamerica Commercial Finance Corp. (hereafter "Transamerica"),
have
filed briefs on the issue.

Production Credit Association has established that Michigan

law provides that a creditor holding a security interest in personal property collateral has the right to dispose of the repossessed collateral on the debtor's premises. Mich. Comp. Laws §440.9503; Mich. Stat. Ann. §19.9503.¹ PCA correctly cited In re Double D. Trading, Inc., 34 U.C.C. Rep. Serv. 1762, 1768-1769 (Bankr. D. Mass. 1982) for the proposition that the removal for sale of repossessed collateral from the debtor's premises could be considered one factor in a commercial unreasonableness defense to a suit for a deficiency judgment. We note that the debtor in Farmers & Merchants Bank v. Dyersburg Production Credit Ass'n, 728 S.W.2d 10, 4 U.C.C. Rep. Serv.2d 305, 315 (Tenn. App. 1986) also argued that the PCA's failure to sell the farm equipment at its location on the debtor's farm was unreasonable. A sale held at the debtor's plant was found to be reasonable in Sierra Financial Corp. v. Brooks-Farrer Co., 15 Cal. App.3d 698, 93 Cal. Rptr. 422, 8 U.C.C. Rep. Serv. 1125 (1971).

¹This section states:

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 9504.

Clearly, the law is on PCA's side of this issue.

Neither the debtor nor the trustee express any opposition to PCA's request, nor do they indicate any concern for potential harm to their property interest should the auction take place at the debtor's former place of doing business. On the other hand, Transamerica argues that it wears two hats on this issue. It wears the hat of a mortgagee in possession of the debtor's real property and therefore acts as a quasi-trustee for the purpose of protecting the debtor's property. It also wears the hat of a secured party in its own right; as such, it cares that its collateral not be damaged by the disposition of PCA's property. In both respects, Transamerica, in a Henny-Penny-like expression of worry, claims that PCA's multitudinous hordes of voracious buyers will attack and destroy Transamerica's collateral, which, as far as we can tell to date, takes the form of real estate or "fixtures" in the form of entire buildings.

In light of the fact that a statute expressly authorizes the relief requested by PCA (indeed, seems to provide for it even without court order), Transamerica must show more than that it is "worried" about potential damage. it must clearly establish an evidentiary basis justifying its belief that there is a cause for such concern. This it has failed to do. Furthermore, if, due to PCA's negligence in conducting the auction, some collateral securing Transamerica's claim

is damaged, Transamerica retains its common law remedies against PCA, a presumably solvent financial institution. More protection than that, at this time, seems unwarranted.

For these reasons, PCA's motion for authority to conduct an on-site auction of its collateral is hereby **GRANTED**.

Dated: November 18, 1988.

ARTHUR J. SPECTOR
U.S. Bankruptcy Judge